

1 worse, rightly or wrongly, good or bad, the Commission has  
2 adopted a rule to interpret what substantial change is. The  
3 Commission has said if it's a predesignation amendment a  
4 change in channel is a substantial change which requires  
5 notice and, therefore, you have to go back to the processing  
6 line. The rule is absolutely clear about that. We all know  
7 that. The Commission --

8 JUDGE STIRMER: Well, wait. You know, that's -- you  
9 say that, but you say predesignation. They're not in hearing.  
10 They're on the processing line to begin with.

11 MR. PAPER: That's predesignation.

12 JUDGE STIRMER: Right.

13 MR. PAPER: That's what I'm saying.

14 JUDGE STIRMER: How are they going to go back to  
15 the pro-- Just meet --

16 MR. PAPER: Oh, no. What I'm -- Well, I guess maybe  
17 I wasn't clear. What I'm saying is the Commission defines  
18 substantial change. It says that a change of channel is a  
19 substantial change under the Act only if it's proposed before  
20 designation. And what the Commission has said, in effect, in  
21 its rules, like you just said, if you propose a change in  
22 channel after designation, it is not deemed to be a  
23 substantial change under the Act and, therefore, no notice is  
24 required. That's what the rule says.

25 The rule is absolutely clear. Everybody knows how it

1 | works and that's how it has worked. What has happened is that  
2 | it's created a situation here where the Bureau, Mr. Schonman  
3 | and the Bureau are saying gee, well, maybe the way this rule  
4 | works, maybe we don't want it to work this way. Maybe we  
5 | didn't think this through carefully enough. Maybe we should  
6 | provide people like Long Beach with notice so they know what's  
7 | going on. Well, maybe they should, but that's not what's  
8 | before us now. That's prospective.

9 |         Maybe the Bureau should consider changing the rule  
10 | and making it like you just said, so that if anybody changes a  
11 | channel, whether it be before or after designation, they  
12 | should go back to the processing line. Maybe the Commission  
13 | should be consistent. Maybe it should change its rules to  
14 | reflect that, but this is not the place to do that. That has  
15 | to be done in a comment and notice rulemaking procedure.  
16 | Right now, for better or worse, we are stuck with the rules as  
17 | they are.

18 |         I do not believe -- Given -- The Commission has  
19 | interpreted what the Act means and nothing in the rule  
20 | entitles Long Beach to notice. And, in fact, the Commission  
21 | has taken the very opposite view, that our change is not  
22 | deemed to be a substantial change. No one is entitled to  
23 | public notice. So therefore, to the extent there is a  
24 | problem, we have to go by what the Commission's rules are. We  
25 | have to put blinders on, in a way. To the extent we don't put

1 blinders on, we start considering equities. I think the  
2 equities greatly favor us over Long Beach. My suggestion is  
3 the following.

4 I want to point out one other thing. Mr. Schonman  
5 says, and from an engineering perspective, I am told, too, by  
6 my engineer that this proposal is inconsistent with ours. We  
7 do believe that. But my experience has been, Your Honor, that  
8 when a, an amendment -- an engineering proposal goes through  
9 review at the Commission they find all kinds of things that  
10 nobody thought of. Sometimes the data base shows different  
11 figures for tower height, and I've been through that. They  
12 find all kinds of things when they sit down and go through a  
13 particular engineering proposal.

14 Where are we on the Long Beach proposal? Where we  
15 are is this application is sitting on the processing line.  
16 It's there. The processing, the processing staff has not gone  
17 through it. My guess is it will probably take six months for  
18 the, for the FCC to complete that process. So they, they  
19 might not even complete their, their review of that  
20 application until December. So right now the processing staff  
21 has not made any judgments. We've made preliminary judgments,  
22 us, based upon our engineering, which brings me back to the  
23 point about where we are in this case.

24 We have a decision by you that's become final. And I  
25 want to bring up one other point that Mr. Schonman raised. He

1 | said that the grant of our application is not a ministerial  
2 | task because it requires a finding of the public interest and  
3 | all that. Well, certainly, I recognize that, that you do have  
4 | to make that finding. But you've already made that  
5 | determination. You said in your order that this application  
6 | is grantable but for the FAA approval and that it would be  
7 | granted as soon as that FAA approval is received.

8 |           So you've already made a determination. And it's not  
9 | that you have abandoned your -- or abdicated your  
10 | responsibility. You have fulfilled your responsibility to  
11 | determine that subject to FAA approval this application should  
12 | be granted and will be granted.

13 |           JUDGE STIRMER: Well, that is correct, I've said  
14 | that. And I meant it at the time I said it.

15 |           MR. PAPER: I know you did.

16 |           JUDGE STIRMER: But you have to recognize that at the  
17 | time that was written none of us had any knowledge that a week  
18 | before or so another application had been filed that may well  
19 | have been mutually exclusive with your amended proposal. And  
20 | that's -- We go back --

21 |           MR. PAPER: Well, well, if I could just respond to  
22 | that one point, Your Honor. You are right. Again, we have to  
23 | live by the rules. We can't just -- We can't fly by the seat  
24 | of our pants and say well, just sitting here, if we're making  
25 | up the rules ourself what seems to be a good result? We have

1 to say -- We have to decide this in the framework of the  
2 rules. And I go back to what I say, your July 25th order, it  
3 may not have appeared in the FCC Public Digest, it may not  
4 have appeared where people normally think to look for new  
5 applications. The fact of the matter is, again, the  
6 Commission rules provide that your release of that order  
7 constitutes public notice, and the world at large is charged  
8 with knowledge about what you did.

9 JUDGE STIRMER: Let me ask you this, Mr. Paper. Let  
10 me give you a hypothetical question. Let's assume for a  
11 moment that you filed to amend on day one. While that  
12 amendment was pending before me, somebody filed a competing  
13 application specifying the channel to which you wanted to  
14 amend to. Now, what would you say about that? Does that  
15 create a mutually exclusive filing?

16 MR. PAPER: Well, here's what I would have said about  
17 that, Your Honor. I would have argued the same as I'm arguing  
18 now with one, with one slight change. I might have said, if I  
19 thought it through, we believe that we're entitled to the  
20 protection of the cut-off rules for all the arguments that  
21 I've made before, that I'm sure you're familiar with now. But  
22 if Your Honor decides that we are not, then do not approve the  
23 settlement agreement and we'll stick with Living Way and we'll  
24 go about our business.

25 We would have had the option -- You would not have

1 approved the settlement agreement and we wouldn't be sitting  
2 here arguing about this. We'd be working out a deal with  
3 Living Way and we'd be moving forward and resolving it.

4 JUDGE STIRMER: So you would have stayed on 204 or  
5 104?

6 MR. PAPER: Two-oh-four.

7 JUDGE STIRMER: Two-oh-four.

8 MR. PAPER: Whatever it was.

9 JUDGE STIRMER: Yeah.

10 MR. PAPER: But you would not have approved the  
11 settlement agreement and this would not be an issue.

12 JUDGE STIRMER: Right.

13 MR. PAPER: Well, if that's an issue, I would have  
14 made the same argument I'm making now but --

15 JUDGE STIRMER: Yeah. Let me ask you a basic  
16 question. Do you believe under the rules that once you are  
17 designated for hearing you can thereafter change channels and  
18 if good cause for that is shown no one could file a competing  
19 application against your newly specified channel?

20 MR. PAPER: Yes. And I'll tell you why. Because,  
21 Your Honor, the filing of an application, and the courts have  
22 said this and the FCC has said -- the Commission has said  
23 this, the filing of an application does not create any vested  
24 rights. Long Beach filed an application. They spent a few  
25 thousand dollars and they filed an application. They're only

1 entitled to whatever the Commission says they're entitled to.

2 JUDGE STIRMER: All right, let me ask you what do you  
3 say to that, Mr. Schonman? How would you answer that?

4 MR. SCHONMAN: With the scenario --

5 JUDGE STIRMER: No. The question is simply this. If  
6 an application is filed, it's designated for hearing, and  
7 thereafter an amendment is filed to change frequency and good  
8 cause is shown to allow that change in frequency, is that  
9 application protected against any filed applications that  
10 might possibly be mutually exclusive with that?

11 MR. SCHONMAN: Your Honor, the rules don't address  
12 that point, and I don't know of any cases that address that  
13 point. I can't answer the question of whether they are  
14 forever protected. It's a matter of notice. I think it's a  
15 fundamental matter of notice. I, I can't answer the question.  
16 I don't know.

17 JUDGE STIRMER: All right. Now, let me -- I think  
18 I've heard you all fully on this.

19 MR. SCHONMAN: Your Honor, if you don't mind --

20 JUDGE STIRMER: Go right ahead.

21 MR. SCHONMAN: I think what we should do is explore  
22 options, at the very least, to determine what's available to  
23 us here. It would appear to me that if Mr. Paper's client can  
24 explore the possibility of further changing channels to remove  
25 the mutual exclusivity with Long Beach, that would resolve

1 | this particular case.

2 |           MR. PAPER: Well, I can address that, Your Honor.  
3 | Let me start, by way of background, telling you -- And this  
4 | goes back to my question in response to your question about  
5 | what I would have done if we had known about the Long Beach  
6 | application before you approved the settlement agreement,  
7 | because in order to accommodate at least that settlement  
8 | agreement with Living Way we have to reduce our population  
9 | coverage. So we'd sacrifice something in the interest of  
10 | compromise and getting something instead of litigating it.

11 |           And I say that because we have explored the  
12 | possibility, we have tried to talk to Long Beach. Long Beach  
13 | is out of it, they don't want to budge an inch. They want to  
14 | expand their service into Los Angeles is what they want to do.  
15 | And they're asking us to reduce our power to such an extent  
16 | that we will have virtually no population coverage. They want  
17 | us to reduce power to such an extent, in order to accommodate  
18 | their move into Los Angeles, that it would not be a meaningful  
19 | station. So we -- I talked to the engineer.

20 |           Gary and I have talked about this, Mr. Schonman and I  
21 | talked about this yesterday, and I've been -- And by the way,  
22 | I should add that I've been after Santa Monica and pressed  
23 | them to see about exploring the possibility of resolving it  
24 | because it's better to do something like that than fight about  
25 | it. But I'm told that -- by our engineer that there really is



1 nothing that we can do any more. We can't, we can't  
2 accommodate the full scope of what they want. Now, Long  
3 Beach, on the other hand, I will tell you, they can do what we  
4 did with the Living Way.

5 If they will adjust their antenna or reduce power,  
6 I'm not sure which it is, to the north, which is where we are,  
7 if they would just reduce their power in that direction, they  
8 could have their application granted and we could have our  
9 application granted. But they do not want to -- As I  
10 understand it, they don't want to compromise on their coverage  
11 of Los Angeles.

12 MR. SCHONMAN: Your Honor, I have been exchanging  
13 telephone messages with Pat Mahoney who is counsel for Long  
14 Beach. We have not been able to speak with each other this  
15 week, so I don't know their position on, on the option of  
16 settling this case. But from what Mr. Paper has said, I  
17 haven't heard that there are no channels available that, that  
18 Mr. Paper's client can move to.

19 MR. PAPER: Well, that's what I'm saying. I'm  
20 responding to your -- I'm responding --

21 MR. SCHONMAN: Well, I mean, I understand that  
22 perhaps your client might not want to pull back its signal or  
23 reduce its coverage, but, I mean, are you able to  
24 categorically state that there are no other channels available  
25 to, to which you might relocate to remove the mutual

1 exclusivity?

2 MR. PAPER: Nothing that will enable us to provide  
3 sufficient population coverage to make the station worth  
4 doing. That's what, that's what my engineer said. I  
5 specifically asked him that question and he said that the --  
6 that we have already compromised, as I said, reduced our  
7 population coverage in order to accommodate the settlement  
8 with Living Way. Now, he said we can't do it any further. He  
9 said -- This is what he told me, and he said they -- and he  
10 said anybody can compromise. They're going into Los Angeles,  
11 they can compromise a little bit, and he feels that that would  
12 be a workable solution.

13 And, in fact, in our informal objection to their  
14 application the engineer in fact said -- proposed what he  
15 thought that they could do to enable the staff to grant their  
16 application and let our application go forward.

17 MR. SCHONMAN: Your Honor, if this is a problem of  
18 who's going to compromise, who's going to give in a little bit  
19 here and a little bit there, perhaps this case is ripe for  
20 application of the ADR process, the alternative dispute  
21 resolution. I wonder if the parties might explore entering  
22 into that process.

23 MR. PAPER: Well, I'm not -- I'm always happy to --  
24 We don't have to go to ADR because I don't know why we would  
25 need that. I think that we're prepared to sit down and talk.

1 My people are not being -- are trying to be reasonable about  
2 it, but they don't want to make an investment in a station  
3 that's not going to have any coverage. You and I and Pat can  
4 talk certainly about it and I'm happy to explore the  
5 possibility of a settlement. I'm not drawing a line in the  
6 sand.

7 MR. SCHONMAN: I mean, the problem that I'm having  
8 now is, Your Honor, I don't -- I just don't see how, given  
9 what you know now and, and the information that you have now,  
10 is, is dramatically different from what you knew when you  
11 initially granted the settlement agreement. Given what you  
12 know now, I can't imagine how you could reach the public  
13 interest determination that Mr. Paper is -- Mr. Paper's  
14 client's application can be granted when you know that there's  
15 a technically inconsistent application on the processing line.

16 JUDGE STIRMER: Well, but if we all knew what Long  
17 Beach was doing, we wouldn't have had a settlement agreement  
18 in the first instance.

19 MR. SCHONMAN: Well, what's interesting about that,  
20 Your Honor, is we all know that you granted the settlement  
21 agreement on July 25. The public notice of Long Beach's  
22 application was released on July 19th.

23 MR. PAPER: It was July -- It was actually, it was  
24 actually on the paper July 21 or 22.

25 MR. SCHONMAN: I mean, what --

1 MR. PAPER: But nothing -- From looking at that, you  
2 can't -- What that means is --

3 JUDGE STIRMER: Why didn't someone call that to my  
4 attention?

5 MR. PAPER: I'll tell you why, Your Honor, because  
6 what happened is -- All it meant is when it appeared on the  
7 Public Digest -- the Daily Digest that comes out with the FCC  
8 that lists all the applications that are filed, it was an  
9 application for Long Beach, California. The lawyers looked --  
10 I looked at that. It never would have struck me that there  
11 was any inconsistency.

12 MR. SCHONMAN: Well, Your Honor, that's, that's the  
13 problem. Mr. Paper is saying that assuming that he saw that  
14 public notice he wouldn't have been able to make the  
15 connection between that application and his client's  
16 application. In Long Beach's case, they didn't even have  
17 notice. They didn't have any public notice that Mr. Paper had  
18 filed an amendment to his application.

19 MR. PAPER: Yeah, but I come back -- They could have,  
20 they could have -- They knew about it before the 30-day  
21 reconsideration period started. They could have done  
22 something. In two days they could have done something.

23 MR. SCHONMAN: Well, they're, they're not seeking,  
24 from what I understand, they're not seeking reconsideration of  
25 your order granting the settlement agreement. They're seeking

1 intervention.

2 JUDGE STIRMER: But they're not entitled to  
3 intervention unless their application is consolidated in this  
4 proceeding. They have no way of assisting me in the  
5 resolution of the application before me.

6 MR. SCHONMAN: Well, Your Honor, if this problem, and  
7 I believe it is a, a major policy problem, one of the options  
8 is to certify the question of notice to the Commission. Now,  
9 if that's done, the only way that Long Beach can participate  
10 in commenting on this question is to grant them intervention  
11 in this case so that they can at least --

12 JUDGE STIRMER: I don't believe they're entitled to,  
13 to intervene in this case, not as the case is presently  
14 constituted before me. On what basis would they be entitled  
15 to intervene? They don't have an application pending. They  
16 have no knowledge of the application before me to the extent  
17 that they can assist me in the -- in resolving whatever issues  
18 are present in this case, and there are none other than the  
19 air hazard issue, which is going to be resolved in favor of  
20 the applicant.

21 MR. SCHONMAN: Your option -- Your Honor, another  
22 option then is to --

23 JUDGE STIRMER: Well, what is --

24 MR. SCHONMAN: -- to explore consolidating or having  
25 the Commission consolidate --

1 JUDGE STIRMER: Well, what is the status of that  
2 application now?

3 MR. SCHONMAN: It is still pending. That's my  
4 understanding.

5 JUDGE STIRMER: Have they considered the, the, the  
6 pleadings that were filed, the informal objection to that  
7 application? And have they resolved whether they can accept  
8 that application for filing under the circumstances of the  
9 case under the Commission's rules? That's the first thing  
10 that should be done, and that would resolve the problem,  
11 because then we'd know whether we have a competing application  
12 or we don't. And if we do, then we have to consolidate them.  
13 If we don't, then I can grant the application before me and  
14 that would put an end to this case.

15 MR. SCHONMAN: Your Honor, I don't know if the Bureau  
16 staff has examined those pleadings on the processing line.  
17 All I know is that, that the Long Beach application is still  
18 pending.

19 MR. PAPER: Here's my thought. That case is  
20 obviously being litigated before the Bureau on the processing  
21 side. My view about it is the following, Your Honor. You  
22 have an order which you can now implement.

23 JUDGE STIRMER: I understand that.

24 MR. PAPER: And that -- What I'm saying is -- But  
25 what I'm saying is the Bureau -- What will happen is when the

1 processing staff gets around to dealing with it they would  
2 have to deal with whatever action you take.

3 JUDGE STIRMER: I understand that. I just don't want  
4 to do something if it's to grant your application, to grant  
5 your application and then find a year or two from now that I  
6 shouldn't have done that. The Court of Appeals tells me that  
7 there was a mutually exclusive situation here and both  
8 applicants should have been comparatively considered. Then  
9 you have nothing. Your grant is annulity. And I don't know,  
10 you may have even built the station by that time.

11 I don't, I don't want to get into that. I'd rather  
12 have that resolved before I authorize you to go forward with  
13 constructing a station where there may be some taint of  
14 legality to it. I just don't want to do that. I recognize  
15 you have a great many equities in your favor, as I've said  
16 before.

17 MR. PAPER: Right.

18 JUDGE STIRMER: And I don't know, maybe that will  
19 carry the day for you, because I know that if you knew that  
20 you were going to get into another mutually exclusive  
21 situation you wouldn't have, you know, implemented that  
22 settlement agreement. I mean, that would have been senseless  
23 to jump out of one frying pan into another one.

24 MR. PAPER: Right.

25 JUDGE STIRMER: I mean, that doesn't make any sense.

1 So -- And it may well be that you do have the protection since  
2 you weren't here and that any -- a mutually exclusive  
3 application cannot be filed against your application because  
4 you tried to resolve your first mutually exclusive situation  
5 by amending and satisfying the Commission's desire that cases  
6 be settled in a fashion that would avoid litigation. And  
7 that might be additional equities in your favor. But equities  
8 are one thing, legality is another thing.

9           What I suggest is that I would like the Bureau to  
10 determine whether we can get this question resolved as to the  
11 processing of this application, whether it's entitled to any  
12 consideration or whether it's considered to be untimely filed,  
13 that it's not mutually exclusive with the application before  
14 me. I would like, if we can, to get a quick resolution to  
15 that question, and then we know where we're going in this  
16 case. If the application is considered untimely filed and not  
17 mutually exclusive, then I can proceed immediately to grant  
18 the application before me, not that that might still be taken  
19 subsequently to the Court of Appeals.

20           I'm not saying it wouldn't, but at least the staff  
21 would have an opportunity to process that application and  
22 decide under the rules whether it's mutually exclusive or not.

23           MR. PAPER: Your Honor, the only problem -- the only  
24 concern I have, Your Honor, and I appreciate your position and  
25 I understand certainly what you're saying. I guess the only



1 | thought I have is to the extent that parties want to litigate,  
2 | you know, whether it be -- And obviously, it depends upon  
3 | which way the decisions come out and it depends upon a lot of  
4 | factors. We would have a situation here where there's two  
5 | parties who are claiming, rightly or wrongly, competing  
6 | interests. And so if they want to, they can always litigate  
7 | whatever happens.

8 |           In other words, even if you should get a resolution,  
9 | for example, from the Bureau -- Let's suppose -- Let me take  
10 | the worst case for my situation. Let's suppose the Bureau  
11 | comes back and says we've looked at the Long Beach  
12 | application, we've considered Santa Monica's arguments, we  
13 | think they're wrong, we're going to consolidate this into  
14 | hearing with you, we're going to deny my informal objection.

15 |           MR. SCHONMAN: That's a possibility, Your Honor.

16 |           MR. PAPER: Okay. What am I going to do? I'm going  
17 | to appeal it to the Commission.

18 |           JUDGE STIRMER: Okay.

19 |           MR. PAPER: I'm going to litigate that because I  
20 | think that's the wrong decision.

21 |           JUDGE STIRMER: Okay.

22 |           MR. PAPER: And then if I take that, I might take  
23 | that to the Court of Appeals if the Commission persists  
24 | because --

25 |           JUDGE STIRMER: But, I mean, while you're litigating

1 that, you're going to be before me and I'm going to try and --  
2 at least try to the best of my ability to get some kind of an  
3 accommodation between the two of you to settle the case in  
4 some fashion. But, I mean, the fact that you're going to  
5 continue to litigate it is not going to mean that this case is  
6 not going to go forward before me.

7 MR. SCHONMAN: Your Honor, another possibility is  
8 after the Bureau has examined the application and the  
9 arguments that Mr. Paper made in the informal objection, the  
10 Bureau still may not be in a position to, to make the  
11 determination as to --

12 JUDGE STIRMER: Then take it to the commissioners.  
13 And you can present it on an agenda, right into the Commission  
14 to resolve. But I think that's the first step that we have to  
15 do, is get a resolution of this question.

16 MR. SCHONMAN: That would essentially be the same  
17 course that certification would, would constitute if, if Your  
18 Honor were to certify the question to the Commission.

19 JUDGE STIRMER: I have nothing to certify. There's  
20 no application -- I don't even know if that application, from  
21 an engineering standpoint, is in fact mutually exclusive. I  
22 haven't examined that. I don't even know if that application  
23 that was filed is acceptable for filing, and it's, from an  
24 engineering or technical or legal question, acceptable. I  
25 don't know anything like that. That's why it has to be

1 processed. So my certifying that question is premature. You  
2 have to process that application, determine that it is in fact  
3 mutually exclusive or inconsistent and then make a decision as  
4 to whether or not it's entitled to comparative consideration  
5 with the application before me. And that's a processing  
6 question based on the Commission's rules.

7 MR. SCHONMAN: Well, Your Honor, I will endeavor to,  
8 to have the Bureau make that determination as soon as we can.  
9 And I think --

10 JUDGE STIRMER: And also, you know, bring the two  
11 parties together to see if there's some accommodation that can  
12 be made.

13 MR. SCHONMAN: Well, that, that, that was a matter  
14 that I, I wanted to bring up. Saying that we'll try to do it  
15 as soon as possible, that's a relative matter. We will do it  
16 as fast as we can. Perhaps if it's going to take more than 30  
17 days to do this, we'll file an interim report with you. Well,  
18 not an interim report, but we'll file a progress report with  
19 you. Perhaps Your Honor might ask of Mr. Paper to do likewise  
20 within 30 days, to file a progress report on the status of any  
21 negotiations.

22 JUDGE STIRMER: Well, I think any negotiations, the  
23 Bureau should be a part of them.

24 MR. SCHONMAN: Yes.

25 MR. PAPER: I don't think, as a practical matter, you

1 know, my client has tried and they've made overtures. I have  
2 encouraged them to and they have made overtures. And at this  
3 juncture, my guess is that it's going to be settled -- it'll  
4 only be settled if the Bureau takes an active role in  
5 proposing a -- what the Bureau believes to be an equitable  
6 resolution.

7 JUDGE STIRMER: Let me ask certain questions. How  
8 far is Mojave from Long Beach?

9 MR. PAPER: Quite a ways. I was just out there, so a  
10 couple hundred miles.

11 JUDGE STIRMER: All right.

12 MR. PAPER: I would say --

13 JUDGE STIRMER: Are they --

14 MR. PAPER: It's a long, it's a long way.

15 JUDGE STIRMER: Are there any educational stations  
16 in --

17 MR. PAPER: Mojave?

18 JUDGE STIRMER: No. Yeah, Mojave.

19 MR. PAPER: I don't think so.

20 JUDGE STIRMER: Huh?

21 MR. PAPER: I don't believe so.

22 JUDGE STIRMER: And are there any --

23 MR. PAPER: Except Living Way, the one you just  
24 granted.

25 JUDGE STIRMER: Well, that's true. But that's not in

1 Mojave.

2 MR. PAPER: Well, no, they're, they're nearby.  
3 They're closer than Long Beach, I'll tell you that.

4 JUDGE STIRMER: How many in Long Beach? Do you  
5 know -- I'm looking at the 307B --

6 MR. PAPER: Well, the 307B, they're, they're  
7 expanding into Los Angeles. I think from a 307B perspective,  
8 without doing a careful analysis that Your Honor would  
9 otherwise require, my guess is that it would probably be  
10 preferred in that regard. I think that Your Honor's point is  
11 well taken. See, I think that maybe --

12 JUDGE STIRMER: These are, these are matters that,  
13 that should be considered and discussed with Long Beach and  
14 Santa Monica, and I think the Bureau should take an active  
15 role in, in trying to facilitate a, a settlement of this thing  
16 because I think -- I mean, both of those applications probably  
17 could be granted if they -- if Long Beach pulls back their  
18 contour somewhat, still gets a piece of Los Angeles, maybe not  
19 as much as they would prefer. But it would enable them to get  
20 granted.

21 And the other solution might be to get nothing at  
22 all. All right, so why don't we leave it at that?  
23 Mr. Schonman, if you will pursue this processing line to see  
24 if you can put that application on a fast track and determine  
25 whether or not it's in fact mutually exclusive?

1 MR. SCHONMAN: We will do that.

2 JUDGE STIRMER: While, at the same time, pursuing  
3 with Mr. Mahoney and Mr. Paper the possibility of an  
4 accommodation that would resolve the differences between those  
5 two applications?

6 MR. SCHONMAN: And, and in the interim, we'll  
7 maintain a status quo in this proceeding.

8 JUDGE STIRMER: I'll take this matter under  
9 advisement, pending further developments along the lines that  
10 we discussed.

11 MR. SCHONMAN: Very well.

12 JUDGE STIRMER: All right. Is there anything  
13 further?

14 MR. PAPER: No, Your Honor.

15 JUDGE STIRMER: Thank you very much. I appreciate  
16 your comments and discussion here this morning.

17 MR. PAPER: Thank you, Your Honor.

18 MR. SCHONMAN: Thank you.

19 (Whereupon, at 10:05 a.m., the proceeding was  
20 adjourned.)

21

22

23

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25

**CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER**  
SANTA MONICA  
COMMUNITY COLLEGE DISTRICT

**Name**

MM-94-71

**Docket No.**

Washington, D.C.

**Place**

October 21, 1994

**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 46, inclusive, are the true, accurate and complete transcript prepared from the reporting by Barbara Lord in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

10/26/94

**Date**

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